

3. On April 14, 2014, the agency sent the Petitioner a notice indicating that effective May 1, 2014, her health care benefits would be ending and that her FoodShare benefits would be reduced from \$104.00 per month to \$76.00 per month. (Exhibit 3, pg. 18)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 18, 2014. (Exhibit 1)
5. In March 2014, the Petitioner began receiving Unemployment Insurance Benefits (UIB) in the amount of \$158.00 per week. Thus, based upon that information Petitioner's monthly UIB income works out to be:

$$\$158 \times 4.3 \text{ average weeks per month} = \$679.40 \quad (\text{Exhibit 3, pg. 14})$$
6. In April 2014, the Petitioner received three weekly UIB checks, in the amounts of \$87.00, \$146.00 and \$146.00. Thus, based upon this information Petitioner's monthly UIB works out to be:

$$\$87 + \$146 + \$146 = \$379$$

$$\$379 \div 3 = \$126.33 \text{ average UIB check}$$

$$\$126.33 \times 4.3 \text{ average weeks per month} = \$543.22 \quad (\text{Exhibit 2, pg. 4})$$
7. In March 2014, the Petitioner received two bi-weekly paychecks from J Reckner Associates, the first reflecting gross income of \$259.60 and the second reflecting gross income of \$118.00. The Petitioner's monthly earned income works out be as follows:

$$\$118 + \$259.60 = 377.60$$

$$\$377.60 \div 2 = \$188.80 \text{ average bi-weekly paycheck}$$

$$\$188.80 \times 2.15 \text{ average bi-weekly pay periods per month} = \$405.92$$

(Exhibit 3, pg. 13; Exhibit 2, pg. 6)
8. In April 2014, the Petitioner received two bi-weekly paychecks, each reflecting gross income in the amount of \$47.20. Based upon this information, Petitioner's average bi-weekly income works out to be:

$$\$47.20 \times 2.15 \text{ average bi-weekly pay periods per month} = \$101.48 \quad (\text{Exhibit 2, pg. 6})$$
9. The Petitioner pays rent in the amount of \$550.00 and she has a heating expense. (Testimony of Petitioner; Exhibit 3, pg. 21)
10. Petitioner's assistance group size is one. (Exhibit 3, pgs. 15-17)

DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has a member over age 60. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

Once a household passes the gross income test the following deductions are applied in determining the FoodShare allotment. (*FSH, at § 4.6*):

- (1) a standard deduction –

This was \$152 per month for a 1-2 person household, *7 CFR § 273.9(d)(1)*:

- (2) an earned income deduction - which equals 20% of the household's total earned income, 7 *CFR* § 273.9(d)(2);

For Petitioner this works out to be: $\$405.92 \times .20 = \81.18

- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 *CFR* § 273.9(d)(3);
- (4) dependent care deduction for child care expenses, 7 *CFR* § 273.9(d)(4); and
- (5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 *CFR* § 273.9(d)(5).

During the time in question, the heating standard utility allowance (HSUA) was to \$450 per month.

During the time in question there was a cap of \$478.00 on the shelter cost deduction, *unless* a household has an elderly, blind or disabled member

FSH, §§ 4.6.7.1 and 8.1.3.

The term ‘disabled’ is a term with a definition as to the FoodShare program:

3.8.1.1 EBD Introduction

An elderly individual is a food unit member age 60 or older.

A disabled individual is a food unit member who receives disability or blindness benefits from any of these programs: [SSA](#), [MA](#), [SSI](#) or SSI related MA, Railroad Retirement Board ([RRB](#)).

FSH, §3.8.1.1.

Because income is budgeted prospectively, when the agency estimated the Petitioner’s May income in early to mid-April 2014, the agency used the earned income the Petitioner received in March 2014. The agency’s earned income determination was based upon paystubs the Petitioner provided. (See Exhibit 3) That was the best information that the agency had available to it at the time. Thus, the agency correctly calculated Petitioner’s earned income as \$405.92. (See finding of fact #7 above)

Although the agency initially relied upon the state data exchange to verify the Petitioner’s UIB, Petitioner did timely report a decrease in her UIB on April 17, 2014. (See Case Comments, Exhibit 3, pg. 3) It appears that when the agency rechecked the data exchange on April 18, 2014, it misinterpreted the information and thought it reflected two payments of for week 15/14 in the amount of \$87 and \$71. (Id.) However, the \$71 was an offset, most likely a repayment of an overpayment.

Per *FSH* §4.5.6.4, repayments for a UIB overpayment, that are withheld from a UIB check, are not to be counted as income. As such, the agency should have disregarded the \$71 and re-ran eligibility.

Petitioner’s prospectively budgeted income for May 2014, should have worked out to be as follows (See findings of fact #s 6 and 7 above):

\$543.22 UIB
+\$405.92 earned income

\$949.14

Applying the applicable deductions to Petitioner's income we have the following net income calculation, effective May 1, 2013:

| | | | |
|------------------------------------|------------|------------------------|---|
| Gross Income | \$949.14 | Rent | \$550.00 |
| Earned Income Deduction | -\$81.18 | HSU | \$450.00 |
| Standard Deduction | -\$152.00 | 50% Net income | -\$357.98 |
| No Medical Expenses exceeding \$35 | | | |
| No Dependent Care Expenses | | Excess Shelter Expense | \$642.02, but the maximum allowed is \$478.00 |
| Net Income | \$715.96 | | |
| Excess Shelter Expense | - \$478.00 | | |
| Final Net Income | \$237.96 | | |

Individuals, in a household of one, with a net income of \$374.14 qualify for a FoodShare allotment of \$117.00 per month. *FSH* §8.1.2.

The Petitioner indicated that her earned income also decreased. The Petitioner provided documentation that her earned income went down in April 2014. However, she needed to timely report this to the agency and provide verification of the change. There is no indication in the record that this was done. As such, the change in earned income could not be accounted for when determining Petitioner's May 2014 budget.

CONCLUSIONS OF LAW

The agency incorrectly calculated the Petitioner's Foodshare allotment, effective May 1, 2014.

THEREFORE, it is

ORDERED

That the agency issue to Petitioner total FoodShare benefits equaling \$117.00 per month, effective May 1, 2014. The agency shall take all administrative steps to complete this task within 10-days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

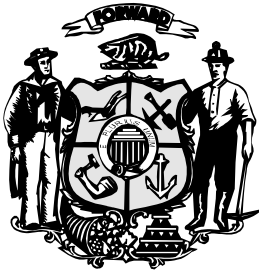
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 26th day of June, 2014

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 26, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability